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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
SUERETH, SARAH ELIZABETH	
ART UNIT	PAPER NUMBER
3749	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/614,532	MCFADDEN, DAVID H.	
	Examiner	Art Unit	
	SARAH SUERETH	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 July 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *117-136* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *117-136* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/27/10*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed on 07/20/10 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 117-136 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. All of the independent claims have been amended to include the limitation "left and right side walls of the cavity". However, this limitation is indefinite because cavities are by definition the absence of material, and it is unclear what is meant by the cavity having sidewalls.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 117-121,123,124,126-132,are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,327,279 to Guibert ("Guibert") (cited by applicant).

Guibert teaches a system and method of speed heating a food product with gas comprising the steps of providing a housing (10) defining a cooking chamber/cavity (13) including a top wall (Figure 1), a bottom wall (Fig. 2), and opposing left and right side walls (Figure 2, side where numeral 13 is pointing and opposing side) , and providing at least three discharge plates (see Fig. 3 and holes of 14a, 14b, and 14c) for directing gas into the heating chamber at locations alongside the left and right side walls of the cavity (see Figure 3). Figure 3 shows the gas being directed in a downwardly convergent manner, and Figure 1 shows how food products (inside trays 12) can be heated by the converging gas flows.

However, Guibert does not explicitly teach the method step of cooking a food product.

In regard to the recitation that the method relates to speed "cooking" a food product, the examiner does note that Guibert desired only to heat the food products contained within chamber and not "cook" them. However, the purpose for not cooking these products is so that they may be refrozen for later use (see col. 5, lines 29-37). Further, Guibert provides for the interrupted application of heat in order to preventing cooking of the food products and acknowledges that cooking would result if the heat source is not interrupted (see col. 6, line 65 through col. 7, line 17). It has been held that the elimination of a step and its function is obvious if the function is not desired. See MPEP 2144.04(II)(A). The examiner considers that it would be obvious to a person

of ordinary skill in the art that were one to eliminate the heat interruption described in Guibert if one is not concerned with merely heating a food product to allow it to be refrozen. Accordingly, the person of ordinary skill would recognize that the method and system of Guibert would then be provided for cooking the food product.

Regarding claims 118,121,132, Guibert also discloses conduits for directing gas to and from the chamber (As1 and As2, Fig. 2) and heating means in the from of heaters (18 and 19). However, the egress opening for exhaust is shown located on either side of the oven instead of the top wall as claimed (see Figure 3). However, the oven would operate equally well with the exhaust duct in either location. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guibert apparatus by moving the exhaust duct to above the oven as matter of obvious design choice.

Regarding claim 124,129,130 heating means in the from of heaters (18 and 19) and a blower (15) and motor (16) are provided to selectively control a flow of air through the holes in compartment (14) to propel the air at high velocity causing collision in order to rapidly heat food products placed therein (see col. 6, lines 21-56 and Fig. 2).

Regarding claims 119,131, there are no vertical discharge plates (see Figure 2).

Regarding claim 123, there are gas directing apertures at both the top of the oven and the bottom of the oven (see Fig. 3).

In regard to claims 126-128, Guibert clearly discloses that the gas directed by blower (15) is propelled at high velocity (see Abstract). To have selected a specific velocity, would be simply a matter of optimizing the prior art disclosure of high velocity and is not regarded as patentably distinct. See MPEP 2144.05 (II)(A).

6. Claims 122 and 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guibert in view of U.S. Patent No. 6,060,701 to McKee et al. ("McKee").

Guibert teaches all the limitations of claims 122 and 125 except for a damper means and possibly for a variable speed motor for the blower.

McKee teaches a speed cooking/heating oven in the same field of endeavor as Guibert. In McKee, it is recognized that a conduit (20) providing for the circulation of air (i.e. gas, see col. 3, lines 40-42) may include a damper to modify the air flow through the conduit. McKee also discloses the use of a variable speed blower but notes that a damper also desirably serves to provide a similar effect as a variable speed blower when a fixed speed blower is employed (see col. 5, lines 55-59).

Therefore, in regard to claims 122 and 125, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the oven of Guibert to incorporate the damper and variable speed blower as taught in McKee to desirably control the volume of air flower to provide the desired thermal energy for the cooking chamber (see McKee, col. 5, lines 50-59).

7. Claims 133-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guibert in view of U.S. Patent No. 5,166,487 to Hurley.

8. Guibert, as discussed above, discloses the invention as claimed with the exception of a microwave source in addition to convection heating.

9. Hurley discloses that it was old and well known in the art to use microwave heating in addition to convection heating in order to cook food significantly faster than a pure convection oven, while maintaining the desired texture and appearance of the food (col. 1, lines 9-16).

10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guibert apparatus to include a microwave heat source as taught by Hurley in order to cook food significantly faster than a pure convection oven (col. 1, lines 9-16).

Regarding claim 134, Guibert also discloses conduits for directing gas to and from the chamber (As1 and As2, Fig. 2) and heating means in the from of heaters (18 and 19). However, the egress opening for exhaust is shown located on either side of the oven instead of the top wall as claimed (see Figure 3). However, the oven would operate equally well with the exhaust duct in either location. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guibert apparatus by moving the exhaust duct to above the oven as matter of obvious design choice.

Regarding claim 136, there are no vertical discharge plates (see Figure 2).

Regarding claim 135, there are gas directing apertures at both the top of the oven and the bottom of the oven (see Fig. 3).

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 117-136 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3,6,8-10 of copending Application No. 10/614268. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same invention with the exception that Application No. 10/614268 includes additional limitations in the independent claims.

13. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

14. Applicant's arguments filed 7/20/10 have been carefully considered but they are moot in view of the new ground of rejection above.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH SUERETH whose telephone number is (571)272-9061. The examiner can normally be reached on Mondays through Friday 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah Suereth/
Examiner, Art Unit 3749

/Steven B. McAllister/
Supervisory Patent Examiner, Art Unit 3749